

MEMORANDUM OF AGREEMENT

AMONG

THE SOUTH CAROLINA DEPARTMENT OF NATURAL RESOURCES,
THE OFFICE OF THE GOVERNOR OF SOUTH CAROLINA,
THE SOUTH CAROLINA DEPARTMENT OF HEALTH & ENVIRONMENTAL CONTROL
THE NATIONAL OCEANIC & ATMOSPHERIC ADMINISTRATION,
THE UNITED STATES FISH & WILDLIFE SERVICE, and
THE UNITED STATES NAVY

REGARDING NATURAL RESOURCE DAMAGE ASSESSMENT, RESTORATION AND
OTHER NATURAL RESOURCE TRUSTEE ACTIVITIES ARISING FROM THE
M/V EVER REACH OIL SPILL

I. INTRODUCTION

This Memorandum of Agreement (MOA) is entered into by and between the South Carolina Department of Natural Resources (SCDNR), the Office of the Governor of South Carolina (SCOG), the South Carolina Department of Health and Environmental Control (SCDHEC), the National Oceanic and Atmospheric Administration (NOAA) of the United States Department of Commerce, the United States Fish and Wildlife Service (USFWS) acting for the United States Department of the Interior, and the United States Navy (USN) (collectively, "the Trustees") to provide for coordination and cooperation among the Trustees in the assessment of damages for natural resource injuries and losses caused by the discharge of oil into Charleston Harbor, South Carolina, on or about September 30, 2002, from the M/V EVER REACH ("the Spill"), including in planning for the restoration, rehabilitation, replacement and/or acquisition of resources or services equivalent to those injured or lost, and in seeking compensation for claims based thereon.

II. PARTIES

The following officials are executing this MOA as officials or representatives of agencies which act on behalf of the public as Trustees for natural resources under this MOA:

1. The Director of the South Carolina Department of Natural Resources,
2. The Commissioner of the South Carolina Department of Health and Environmental Control,
3. The Governor of South Carolina,
4. The Regional Director of the Southeast Region of the United States Fish and Wildlife Service, as the official authorized to act for the Secretary, Department of the Interior,
5. The Special Counsel for Natural Resources, of the Office of General Counsel, National Oceanic and Atmospheric Administration, and
6. The Commander, Navy Region Southeast, as the official authorized to act for the Secretary of the United States Navy.

III. AUTHORITY

The Trustees enter into this MOA in accordance with the authorities and responsibilities provided to each as designated natural resource trustees under the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 et seq., the Oil Pollution Act of 1990 (OPA), 33 U.S.C. §§ 2701 et seq., and other applicable federal laws, including Subpart G of the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300.600 et seq., and the Natural Resource Damage Assessment Regulations applicable to discharges of oil at 15 C.F.R. Part 990. In addition, SCDNR, SCOG, and SCDHEC enter into this MOA pursuant to authority provided by the Pollution Control Act (PCA), S.C. Code Ann 48-1-10 et seq. (Supp 2002), and/or other applicable State laws.

IV. PURPOSE

This MOA provides a framework for coordination and cooperation among the Trustees to: (i) ensure timely and efficient implementation of a natural resource damage assessment to address the resource injuries, including resource service losses, caused by the Spill, consistent with the procedures and guidance for the conduct of such assessments at 15 C.F.R. 990; (ii) avoid duplication of assessment costs and otherwise ensure

assessment costs are reasonable; (iii) seek compensation for such resource injuries or losses, including reimbursement of assessment costs, and (iv) provide for the restoration, rehabilitation, replacement or acquisition of natural resources and/or services equivalent to those injured or lost.

V. ORGANIZATION

A. To carry out the purposes of this MOA, the Trustees hereby create a Trustee Council (the Council), comprised of one representative appointed by each Trustee. Each Trustee respectively designates its primary representative on the Council, with authority to act on behalf of its agency and vote on matters which come before the Council under this MOA, as follows:

1. For SCDNR: Robert E. Duncan
Environmental Programs Director
South Carolina Dept of Natural Resources
P.O. Box 12559
217 Fort Johnson Road
Charleston, SC 29412-2559
(843) 953-9054; FAX (843) 953-9399
duncane@mr.dnr.state.sc.us
2. For SCOG: Henry J. White
Chief Legal Counsel
Office of the Governor
P.O. Box 12267
Columbia, SC 29211
(803) 734-5252; FAX: (803) 734-5167
hwhite@gov.sc.gov
2. For SCDHEC: Sally Knowles
Bureau of Water
SC Dept. of Health & Environmental Control
2600 Bull Street
Columbia, SC 29201
(803) 898-4175; FAX: (803) 898-3795
knowles@cdhec.sc.gov
4. For USFWS: Diane Duncan
Charleston Field Office, Ecological
Services
U.S. Fish and Wildlife Service
176 Croghan Spur Road, Suite 200
Charleston, SC 29407

(843) 727-4704 (x 29); FAX: (843) 727-4218
diane_duncan@fws.gov

5. For NOAA: Frank Csulak,
NOAA Damage Assessment Center
74 Magruder Road
Highlands, NJ 07732-0428
(732) 872-3005; FAX: (732) 872-3088
frank.csulak@noaa.gov

6. For USN: Kenneth Conley N46E31
Natural Resources Specialist
Commander Navy Region Southeast
Environmental Planning Branch
Bldg 919 Langley Street - Box 102
NAS Jacksonville, FL 32212-0102
(904) 542-8070; FAX: (904) 542-2414
ConleyK@CNRSE.NAVY.MIL

B. Each Trustee shall also designate an alternate representative to the Council and identify its legal representative for matters within the scope of this MOA and shall notify each of the other Trustees' primary representatives of the name, address, telephone, facsimile number, and electronic mail address of these individuals within thirty (30) days of the effective date of this MOA, as defined at Section XVII.B. Each notice shall be considered an addendum to this MOA and included in the Administrative Record for this Spill as an attachment to this document. When acting as a Trustee's primary representative, a designated alternate shall have the same voting rights and decision-making authority as the Trustee's primary representative.

C. A Trustee may change its designated primary, alternate or legal representative by providing a written notice to each of the other Trustees' primary representatives of the new designee's name, address, telephone, facsimile number and electronic mail address. In the event a Trustee's designated primary, alternate or legal representative can no longer serve in that capacity, the Trustee shall designate a new representative within fourteen (14) days from the date the need presents itself. Each such notice shall also be considered an addendum to this MOA and included in the Administrative Record for this Spill as an attachment to this document.

D. In matters addressed by the Council, each Trustee is entitled to one vote to be cast by its primary representative or, in the absence of its primary representative, by its alternate representative. The vote of each Trustee representative is equal and all decisions of the Council will be made by consensus, in accordance with the decision-making procedure in Section VII.

E. The Council may create subcommittees as it deems necessary to effect the purposes of this MOA.

F. NOAA will serve as the Lead Administrative Trustee (LAT) for purposes of administering this MOA, as outlined in Section VI.B. NOAA shall fully coordinate its activities with and act under the direction of the Council. The LAT may be changed by consensus of the Trustee Council.

G. Any member of the Trustee Council may, upon reasonable notice and coordination through the LAT, call or convene a Council meeting or conference call.

H. In fulfilling its responsibilities under this MOA, the Trustee Council may seek advisory participation from or consult with the United States Department of Justice, the Office of the Attorney General of the State of South Carolina or legal advisors of other state or federal agencies, as it deems appropriate.

VI. DUTIES AND RESPONSIBILITIES

A. Trustee Council: On behalf of the Trustees, the Trustee Council shall plan, coordinate and authorize all Trustee activities and matters under this MOA in accordance with the decision-making requirements provided in Section VII. The Trustee Council may take whatever actions the Council, in its discretion, determines are necessary or appropriate under this MOA to address the Trustees' responsibilities for natural resources affected by the Spill. The following actions are among those that the Trustee Council may take under this MOA, in accordance with applicable laws and policies:

1. Plan, conduct and/or oversee scientific and technical studies, sampling and other investigative or analytical actions needed to carry out preassessment, restoration planning, and restoration implementation phase activities pursuant to 15 C.F.R. 990.
2. Develop, implement and/or oversee a plan for the restoration, rehabilitation, replacement, and/or

- acquisition of resources or services equivalent to those injured, destroyed or lost due to the Spill.
3. Provide or arrange for such contracts or agreements for professional, technical, expert or other services as the Council determines are needed to implement assessment or restoration planning activities under this MOA.
 4. Coordinate the manner and timing of any public participation in the assessment or restoration planning process, as may be appropriate, including the issuance of any notices, press releases, or other form of public communication concerning matters within the scope of this MOA.
 5. Provide for participation by the responsible party(s) for the Spill ("RP") in planning or performing assessment or restoration activities, as the Council judges appropriate.
 6. Seek restoration and/or compensation from the RP, as assessed by the Trustees, including the costs to plan, implement, and/or oversee assessment and restoration actions.
 7. Supervise, manage, obligate and/or direct the expenditure of any money paid to the Trustees by or on behalf of any RP for use to assess natural resource injuries or losses and/or to provide for the restoration of natural resources or services.
 8. Coordinate Trustee activities with managers, personnel, contractors and representatives of other entities or State and Federal agencies involved with the Spill, as may be appropriate.

B. Lead Administrative Trustee: The LAT shall administratively coordinate and manage assessment, restoration and other activities under this MOA on behalf of the Trustee Council. The duties of the LAT will include, but are not necessarily limited to: assisting in the planning, implementing and monitoring of natural resource damage assessment activities; coordination of communications with the RP or its representatives; scheduling of meetings or conference calls of the Trustee Council; preparing agendas for scheduled meetings or calls; acting as a central contact point for the Council; establishing and maintaining records and relevant documents

related to the function and activities of the Council, including the Administrative Record contemplated by 15 C.F.R. Part 990; and such other duties as may be directed by the Trustee Council. The LAT will be responsible for keeping the Trustee Council apprised of all pertinent developments on a timely basis. The LAT may delegate or assign any of its duties to another Trustee representative with the concurrence of the Council. The LAT shall not have decision-making rights beyond those held by any other Trustee.

C. Communications with Responsible Party(s): The Trustees will endeavor to have coordinated communications with the RP for the Spill, including its technical and legal representatives, on matters related to assessment and restoration planning, or the resolution of the Trustees' claims for natural resource damages. To the extent possible, no Trustee will discuss matters within the scope of this MOA with the RP or its representatives without first providing the other Trustees notice and an opportunity to participate in such discussions. This agreement does not preclude the LAT from having separate communications with the RP or its representatives for the sole purpose of coordinating interactions or coordinating the exchange of data, documents or other information between the Trustee Council and the RP, consistent with its duties as LAT, nor does it preclude any Trustee from having communications on matters outside the scope of this MOA. If non-coordinated communications with the RP occurs, the Trustee representative(s) involved will immediately inform the other Trustee representatives of the content of that communication.

VII. DECISION MAKING

A. Except as provided in paragraph B of this Section, all decisions implementing this MOA shall require unanimous agreement of the Trustee Council. In the event that unanimous agreement cannot be reached, the matter in dispute will be elevated within the Trustees, if necessary up to the officials named in Section II, for resolution by unanimous consent. Additional mechanisms for the resolution of disputes may be established by further agreement of the Trustees. Decision making deliberations, including in any process utilized for the resolution of disputes, shall focus upon the Trustees' mutual purpose of assessing and restoring, rehabilitating, replacing and/or acquiring the equivalent of the natural resources and services that were affected/injured by the Spill.

B. Among SCOG, SCDNR, and SCDHEC, it is agreed that SCDNR and SCDHEC will keep the SCOG timely apprised of all matters or

issues arising in the normal and ongoing course of coordinating, planning, administering and implementing the NRDA process contemplated by this MOA and that, on these matters, the agreement, vote or signature by the SCDNR and SCDHEC representatives on the Council will signify the concurrence of the SCOG. Key decisions of the Trustee Council under this MOA, however, will require the participation and express agreement, vote or signature of the SCOG representative for "unanimous agreement" to occur under paragraph A of this Section. For purposes of this MOA, the key decisions are: (i) approval of the final restoration plan; (ii) approval of the natural resource damage claim for presentation to the RP; (iii) approval of any settlement of such claim; and (iv) approval of the referral of such claim for litigation on behalf of the State.

VIII. FUNDS RECEIVED OR RECOVERED

A. The Trustees agree that any funds provided by a Trustee, and any funds made available to the Trustees by an RP, for purposes of carrying out natural resource damage assessment and restoration planning activities pertaining to this Spill, shall be used in accordance with OPA and its implementing regulations and in accordance with this MOA, including agreement of the Trustee Council.

B. The Trustees agree that any funds which they may receive or recover as natural resource damages for the Spill, and any interest from the deposit of such damages in an interest bearing account, shall be used solely to (i) provide for or carry out actions to restore, rehabilitate, replace and/or acquire natural resources or services equivalent to those which were injured or lost and (ii) reimburse costs incurred by the Trustees to plan, implement, or oversee assessment and/or restoration actions and, further, in accordance with the terms of a Consent Decree or other settlement document, as may be applicable.

C. With respect to any sums which the Trustees jointly receive or recover as natural resource damages for the Spill, the Trustees agree to cooperate in good faith to establish and maintain, to the extent consistent with applicable law, a joint trust account(s) or joint court registry account(s) for the purpose of receiving, depositing, holding, and/or providing for future disbursement of such funds, including any interest earned thereon. The Trustees may agree that funds recovered as a result of a joint assessment should, to the extent of applicable law and policies, be placed in non-joint accounts in order to fulfill

specific restoration objectives or to provide for separate reimbursement of assessment costs to each Trustee.

D. For sums jointly received or recovered by the Trustees as natural resource damages for the Spill, the Trustee Council will, consistent with its decision-making process, establish standards and/or procedures governing joint use of such funds and make all decisions necessary to the management, administration and use of such funds, including to carry out restoration actions or projects approved in accordance with a Final Restoration Plan.

E. Any decision of the Trustee Council regarding the expenditure of funds received or recovered under paragraphs A through D of this Section will be documented in a written resolution signed by the Trustee Council and included in the Administrative Record for this Spill.

IX. DOCUMENTATION OF ASSESSMENT COSTS

Each Trustee is responsible for tracking and documenting the costs and expenses it incurs as a result of its participation in natural resource damage assessment process under this MOA in a form and manner sufficient to support the recovery of such costs under OPA. The documentation of such costs will, at a minimum, (i) evidence the actual time spent by date and the hourly salary rate applicable to each agency participant; (ii) identify all indirect or overhead rates used in determining costs, including the manner of their application; and (iii) include evidence (such as invoice or receipts) of all contract costs or other reported expenditures. Each Trustee will be responsible for the accuracy of the assessment costs it reports or presents for payment under this MOA. No Trustee is to certify or warrant any assessment cost information other than its own.

X. CONFIDENTIALITY

A. The Trustees agree that it is in the public interest that all scientific data arising out of activities implementing this MOA be made public as soon as its publication will not prejudice the accomplishment of the purposes of this MOA. Accordingly, public availability of scientific data (after quality assurance/quality control) will be the general policy of the Trustees. However, the Trustees also recognize that written or oral communications within and between Trustee agencies related to the assessment of natural resource damages for the Spill will also be undertaken in anticipation of litigation and,

therefore, should be treated as privileged pre-decisional documents, attorney-client communications, attorney work-product or as protected by other applicable privileges (or a combination thereof), as appropriate, and protected from disclosure to the extent possible under applicable Federal or State law. Nothing in this MOA is intended as, nor shall it be construed to be, a general waiver by the Trustees, collectively or individually, of any attorney-client privilege, joint enforcement privilege, or any protection from disclosure afforded under the work-product doctrine or by any other doctrine, privilege, or protection afforded by applicable law.

B. Each Trustee agrees that whenever it receives a request from any non-Trustee party for information or records relating to matters within the scope of this MOA, it will notify the other Trustees of that request in writing. Such notice will be provided no more than 5 days after receipt of the request. Furthermore, each Trustee agrees that whenever a request for production of a document or other record related to the assessment of natural resource damages for the Spill is received pursuant to any applicable Federal or State law, to the extent consistent with or permitted by such law, the request will be forwarded to the Trustee(s) to which a claim of privilege or other lawful grounds for non-disclosure applies and/or whose representatives originally generated or contributed the document or record requested.

C. Nothing contained herein shall be construed as preventing or prohibiting either the Trustees or the Trustee Council from jointly agreeing to the release any record.

XI. PUBLIC ACCESS TO INFORMATION

To facilitate access to scientific data and other information created or obtained by the Trustees in the course of determining appropriate restoration or compensation for natural resource injuries and losses caused by the Spill, the Trustees will compile and maintain a publicly-available Administrative Record to document and support their injury and restoration determinations consistent with 15 C.F.R. Part 990.45. Further, the Trustees will provide the public with appropriate and meaningful opportunities to participate in the restoration planning process including, at a minimum, providing the public with the opportunity to review and comment on a Draft Restoration Plan for the Spill, as required by Section 1006(c)(5) of OPA, 33

U.S.C. 2706(c)(5), the National Environmental Policy Act, 42 U.S.C. 4321 et seq., and applicable State laws.

XII. RESERVATION OF RIGHTS

This document is not intended to create any further legal rights or obligations between the Trustees or their respective representatives, or between any Trustee and any other person(s) not party to this MOA. Nothing in this MOA is intended to imply that any signatory government is in any way abrogating or ceding any responsibilities or authority inherent in its control or trusteeship over natural resources.

XIII. MODIFICATION OF AGREEMENT

This MOA may be modified only in writing signed by all the Trustee parties to the MOA. Additional agreements may be executed by the Trustees with regard to planning or implementing actions to restore, rehabilitate, replace, and/or provide for the acquisition of resources or services equivalent to those injured, destroyed or lost as a result of Spill. The Trustee Council may enter into additional agreements that it finds to be appropriate to carry out its duties and responsibilities under this MOA. These additional agreements may supplement the MOA, in a manner consistent with the provisions of the MOA. In the event of a conflict between language of the MOA and language of a supplemental agreement among the Trustee Council, the language of the MOA shall control.

XIV. TERMINATION

A. This MOA shall be in effect from its effective date, as determined pursuant to Section XVII.B, until terminated by written agreement of the Trustees or upon written finding by the Trustee Council that the purposes underlying the MOA have been fulfilled. Any Trustee may terminate its individual participation in this MOA by giving the other Trustees written notice at least thirty (30) days in advance of its withdrawal. In the event of such withdrawal, this MOA shall remain in full force and effect for the remaining Trustee parties. A Trustee terminating its participation in this MOA shall, within sixty (60) days of issuance of its notice of termination, provide a final accounting of the assessment costs it has incurred and, as applicable, of any funds from another source which it received, deposited, held,

disbursed, managed or expended as a part of the joint assessment process under this MOA.

B. At the termination of this MOA, there shall be a full and final accounting by all Trustees of all funds received, deposited, held, disbursed, managed or expended pursuant to this MOA.

XV. LIMITATION

The duties and responsibilities outlined in this MOA are subject to the availability of funding. Nothing in this MOA shall be construed as obligating the United States, the State of South Carolina or any other public agency, their officers, agents or employees, to expend any funds in excess of appropriations authorized by law.

XVI. THIRD PARTY CHALLENGES OR APPEALS

The rights and responsibilities contained in this MOA are intended only as guidance for the respective Trustees. This MOA shall not be the basis of any claims, challenges or appeals by any person not a party to this MOA.

XVII. EXECUTION; EFFECTIVE DATE

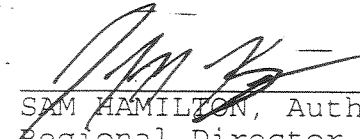
A. Execution: This MOA may be executed in counterparts. A copy with all original executed signature pages affixed shall constitute the original MOA.

B. Effective Date: The effective date of this MOA shall be the date on which the last Trustee to sign this MOA does ~~so~~ sign.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their duly authorized representatives on the day and year appearing below, opposite the signature of the identified official.

SIGNATURES

FOR THE SECRETARY OF THE INTERIOR, TRUSTEE:


for SAM HAMILTON, Authorized Official
Regional Director
U.S. Fish and Wildlife Service
Southeast Region
Atlanta, Georgia

Date: 11/12/03

FOR THE NATIONAL OCEANIC & ATMOSPHERIC ADMINISTRATION, TRUSTEE:

CRAIG R. O'CONNOR
Special Counsel for Natural Resources
Office of General Counsel

Date: _____

FOR THE OFFICE OF THE GOVERNOR,
STATE OF SOUTH CAROLINA, TRUSTEE:

HENRY J. WHITE
Chief Legal Counsel
Office of the Governor

Date: _____

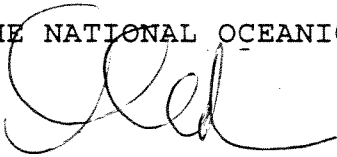
SIGNATURES

FOR THE SECRETARY OF THE INTERIOR, TRUSTEE:

Date: _____

SAM HAMILTON, Authorized Official
Regional Director
U.S. Fish and Wildlife Service
Southeast Region
Atlanta, Georgia

FOR THE NATIONAL OCEANIC & ATMOSPHERIC ADMINISTRATION, TRUSTEE:



Date: 10/21/03

CRAIG R. O'CONNOR
Special Counsel for Natural Resources
Office of General Counsel

FOR THE OFFICE OF THE GOVERNOR,
STATE OF SOUTH CAROLINA, TRUSTEE:

Date: _____

HENRY J. WHITE —
Chief Legal Counsel
Office of the Governor

SIGNATURES

FOR THE SECRETARY OF THE INTERIOR, TRUSTEE:

SAM HAMILTON, Authorized Official
Regional Director
U.S. Fish and Wildlife Service
Southeast Region
Atlanta, Georgia

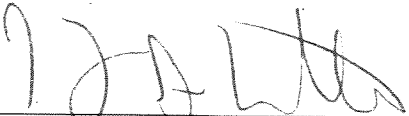
Date: _____

FOR THE NATIONAL OCEANIC & ATMOSPHERIC ADMINISTRATION, TRUSTEE:

CRAIG R. O'CONNOR
Special Counsel for Natural Resources
Office of General Counsel

Date: _____

FOR THE OFFICE OF THE GOVERNOR,
STATE OF SOUTH CAROLINA, TRUSTEE:


HENRY J. WHITE
Chief Legal Counsel
Office of the Governor

Date: 10-16-03

FOR THE SOUTH CAROLINA DEPARTMENT OF NATURAL RESOURCES, TRUSTEE:


JOHN E. FRAMPTON
Director

Date: 7-15-03

FOR THE SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL
CONTROL, TRUSTEE

EARL HUNTER
Commissioner

Date: _____

FOR THE UNITED STATES NAVY, TRUSTEE:

RADM A. G. BROWN
Commander, Navy Region Southeast

Date: _____

M/V EVER REACH Oil Spill - Trustee MOA

FOR THE SOUTH CAROLINA DEPARTMENT OF NATURAL RESOURCES, TRUSTEE:

JOHN E. FRAMPTON
Director

Date: _____

FOR THE SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL
CONTROL, TRUSTEE



EARL HUNTER
Commissioner

Date: 6-23-03

FOR THE UNITED STATES NAVY, TRUSTEE:

RADM A. G. BROWN
Commander, Navy Region Southeast

Date: _____